

ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 06/02/08 02:21 PM  
DEPUTY Vicki Allen  
RECORDED - REQUEST OF  
Boise City

AMOUNT .00 18



108064246

*Re-record*

ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 02/22/08 03:03 PM  
DEPUTY Bonnie Oberbillig  
RECORDED - REQUEST OF  
Boise City

AMOUNT .00 17



108020351

ORDINANCE NO. 6640

BY THE COUNCIL:

BISTERFELDT, CLEGG, EBERLE,  
JORDAN, SHEALY & TIBBS

AN ORDINANCE (CAR06-00075 & CAR06-00074/DA/BONAR DEVELOPMENT GROUP FOR PROPERTY LOCATED AT 6700 N. BOGUS BASIN ROAD) ANNEXING CERTAIN LANDS AND TERRITORY, SITUATED IN ADA COUNTY, IDAHO, AND ADJACENT AND CONTIGUOUS TO THE CORPORATE LIMITS OF THE CITY OF BOISE CITY; ESTABLISHING AND DETERMINING THE LAND USE CLASSIFICATION OF SAID LANDS AS A-1/DA (OPEN LAND WITH A DEVELOPMENT AGREEMENT); PROVIDING THAT COPIES OF THIS ORDINANCE SHALL BE FILED WITH THE ADA COUNTY ASSESSOR, THE ADA COUNTY RECORDER, AND THE IDAHO STATE TAX COMMISSION, AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owner of the lands and territory, situated in Ada County and particularly described in Section One of this ordinance, has requested, in writing, annexation of said lands to the city; and

WHEREAS, the Boise City Council has found and determined that said lands and territory are contiguous and adjacent to Boise City and that annexation of said lands can reasonably be used for orderly development of Boise City; and

WHEREAS, the Boise City Planning & Zoning Commission, pursuant to public notice as required by law, held a public hearing on July 9, 2007, and recommended to the Mayor and Council that annexation be approved and said lands be zoned A-1/DA (Open Land with a Development Agreement); and

WHEREAS, the Boise City Council, pursuant to public notice as required by law, held a public hearing on October 2, 2007, on the proposed zoning for the property described in Section One below, all as required by Idaho Code, Section 67-6525.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:**

**Section 1.** The lands and territory situated in Ada County, Idaho, adjacent and contiguous to the City of Boise City, Idaho, particularly described in Exhibits "A" & "B" which is annexed hereto and by reference made a part of this ordinance as though fully set forth herein, be, and the same are hereby, annexed to and incorporated in the territorial limits of the City of

O-4-08

*Re-record to correct legal description,*

Boise City, Idaho.

**Section 2.** From and after the effective date of this ordinance, all property included within the boundaries and territory described in Section 1 hereof and annexed as provided by said Section shall be subject to all the statutes pertaining to Boise City and all ordinances, resolutions, police regulations, taxation and other powers of Boise City, and all persons and property within the territory so annexed shall be and are entitled to all benefits and rights as are the persons and property presently within the corporate territorial limits of Boise City.

**Section 3.** The City Engineer of Boise City is hereby directed to lodge and file with the City Clerk of Boise City within ten (10) days after the passage and approval hereof, a legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of the lands and territory annexed, pursuant to the provisions of Section 1 hereof.

**Section 4.** Pursuant to the findings of the Boise City Council, the land use classification of the lands described in Exhibits "A," and "B" annexed hereto and by reference made a part thereof is hereby fixed and established as A-1/DA (Open Land with a Development Agreement (Exhibit C), all as provided by the Zoning Ordinance of Boise City.

The reasoned statement is:

The annexation request is entirely within the Boise Area of Impact, and is in compliance with the agreement found in Chapter 11-15 Area of City Impact Agreement.

The requested rezone is for 14 dwelling units on 150 + acres that represents a density of 1 unit per 10.8 acres. This request is in compliance with the *Boise City Comprehensive Plan*. This density can be supported through existing services and service installations resulting from the proposed development. The annexation request proposes contiguous development. The style of the subdivision provides a suitable land use for the area. The request meets most of the development policies for Foothills Policy Plan for development projects as it achieves low impact/low density development while conserving open space, wildlife habitat and providing recreational trails and connectivity.

The traffic impacts are in compliance with the policies for densities and open space protection in *Foothills Policy Plan*. The low density is compatible with the form and scale of the neighborhood.

Although the proposed development is outside the 1.5 minute/ four mile response time and distance for the Boise Fire Department standards for the upper/northern part of the proposal. Provisions and conditions of approval are recommended by the Fire Department to provide a safe and serviceable residential subdivision.

The requested zoning meets the requirements in the Foothills Planned Development Ordinance that implement the *Foothills Policy Plan*.

**Section 5.** The zoning maps of Boise, Idaho, as the same are provided in Section 11-2-1.2, Boise City Code, are hereby changed, altered, and amended to include the real property described in Section 4 above in the land use classification therein described.

**Section 6.** The City Clerk of Boise City is hereby directed to file, within ten (10) days after the passage and approval hereof, a certified copy of this Ordinance with the Ada County Assessor, County Recorder and County Treasurer of Ada County, Idaho, and the State Tax Commission of Idaho, and to file a copy of said legal description and map, as prepared and lodged with her/him by the City Engineer, with the County Assessor and County Recorder of Ada County, Idaho, and the State Tax Commission of Idaho, all as provided by Sections 50-223 and 63-2215, Idaho Code.

**Section 7.** That this Ordinance shall be in full force and effect immediately upon its passage, approval and publication.

PASSED by the Council of the City of Boise City, Idaho, this 5<sup>th</sup> day of February, 2008

APPROVED by the Mayor of the City of Boise City, Idaho, this 5<sup>th</sup> day of February, 2008.

APPROVED:

  
MAYOR

ATTEST:



  
CITY CLERK

Annexation Description  
CAR06-00075 & CAR06-00074  
Exhibit A

A parcel of land situated in the West Half of Section 26, and in the Southwest Quarter of the Southwest Quarter of Section 23, and the South Half of the Southeast Quarter of Section 22, Township 4 North, Range 2 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 26;

Thence along the Westerly line of said Section 26 North  $00^{\circ}07'57''$  West 2639.99 feet to the corner common to Sections 22, 23, 26 and 27;

Thence along the southerly boundary of Section 22 North  $89^{\circ}48'09''$  West 2641.74 feet to the South Quarter Corner of Section 22;

Thence North  $00^{\circ}02'57''$  East 1316.45 feet to the northwest corner of the South Half of the Southeast Quarter of Section 22;

Thence South  $89^{\circ}50'58''$  East 2636.13 to the northeast corner of the South Half of the Southeast Quarter of Section 22;

Thence along the boundary common to Sections 22 and 23 South  $00^{\circ}11'41''$  East 869.02 feet to the northerly boundary of a private road;

Thence along said Northerly boundary through the following courses:

South  $82^{\circ}51'50''$  East 60.56 feet to the beginning of a tangent curve;

Northeasterly 114.20 feet along said curve to the left having a radius of 75.00 feet, through a central angle of  $87^{\circ}14'19''$ , and a chord bearing and distance of North  $53^{\circ}31'00''$  East, 103.48 feet;

North  $09^{\circ}53'51''$  East, 130.75 feet to the beginning of a tangent curve;

Northeasterly 80.20 feet along said curve to the right having a radius of 125.00 feet, through a central angle of  $36^{\circ}45'39''$ , and a chord bearing and distance of North  $28^{\circ}16'40''$  East, 78.83 feet;

North  $46^{\circ}39'30''$  East, 91.27 feet to the beginning of a tangent curve;

Northeasterly 170.92 feet along said curve to the right having a radius of 125.00 feet, through a central angle of  $78^{\circ}20'31''$ , and a chord bearing and distance of North  $85^{\circ}49'45''$  East, 157.91 feet;

South  $54^{\circ}59'59''$  East, 65.06 feet to the beginning of a non tangent curve and the centerline of North Bogus Basin Road;

Thence along said centerline the following courses:

Southeasterly 788.88 feet along the arc of a curve left having a radius of 415.00 feet, through a central angle of  $108^{\circ}54'53''$  and a long chord bearing South  $01^{\circ}52'50''$  East 675.36 feet;

South  $56^{\circ}20'16''$  East 126.24 feet to a point on the southerly boundary of Section 23;

South  $56^{\circ}20'16''$  East, 238.24 feet to the beginning of a tangent curve;

Southeasterly 393.30 feet along said curve to the right having a radius of 330.00 feet, through a central angle of  $68^{\circ}17'09''$ , and a chord bearing and distance of South  $22^{\circ}11'41''$  East, 370.43 feet;

South  $11^{\circ}56'53''$  West, 355.31 feet to the beginning of a tangent curve;

Southeasterly 92.42 feet along said curve to the left having a radius of 350.00 feet, and through a central angle of  $15^{\circ}07'45''$ , and a chord bearing and distance of South  $04^{\circ}23'01''$  West, 92.15 feet;

South  $03^{\circ}10'52''$  East, 98.50 feet to the beginning of a tangent curve;

Thence Southeasterly 122.27 feet along said curve to the left having a radius of 1000.00 feet, through a central angle of  $07^{\circ}00'20''$ , and a chord bearing and distance of South  $06^{\circ}41'02''$  East, 122.19 feet;

Thence leaving said road centerline, non-tangent from said curve South  $79^{\circ}48'48''$  West, 33.00 feet to the beginning of a non-tangent curve on the Westerly right of way line of said N. Bogus Basin Road;

Thence along said westerly right of way the following courses:

Southeasterly 142.71 feet along said curve to the left having a radius of 1033.00 feet, through a central angle of  $07^{\circ}54'55''$ , and a chord bearing and distance of South  $14^{\circ}08'39''$  East, 142.59 feet;

South  $18^{\circ}06'07''$  East 124.20 feet to the beginning of a tangent curve;

Southeasterly 30.36 feet along said curve to the right having a radius of 317.00 feet, through a central angle of  $05^{\circ}29'17''$ , and a chord bearing and distance of South  $15^{\circ}21'29''$  East 30.35 feet;

South  $12^{\circ}36'50''$  East, 88.81 feet to the beginning of a tangent curve;

Southwesterly 512.43 feet along said curve to the right having a radius of 997.00 feet, through a central angle of  $29^{\circ}26'55''$ , and a chord bearing and distance of South  $02^{\circ}06'38''$  West, 506.81 feet;

South  $16^{\circ}50'05''$  West, 655.10 feet to the Southerly line of the Northwest quarter of said Section 26;

South  $16^{\circ}50'06''$  West 75.53 feet to the beginning of a curve;

Southwesterly 121.83 feet along a curve to the right having a radius of 834.00 feet, through a central angle of  $8^{\circ}22'10''$ , and a chord bearing of South  $21^{\circ}01'11''$  West 121.72 feet;

South  $25^{\circ}12'16''$  West 36.59 feet;

South  $64^{\circ}47'44''$  East 33.00 feet to the centerline of N. Bogus Basin Road;

Thence along said centerline the following courses:

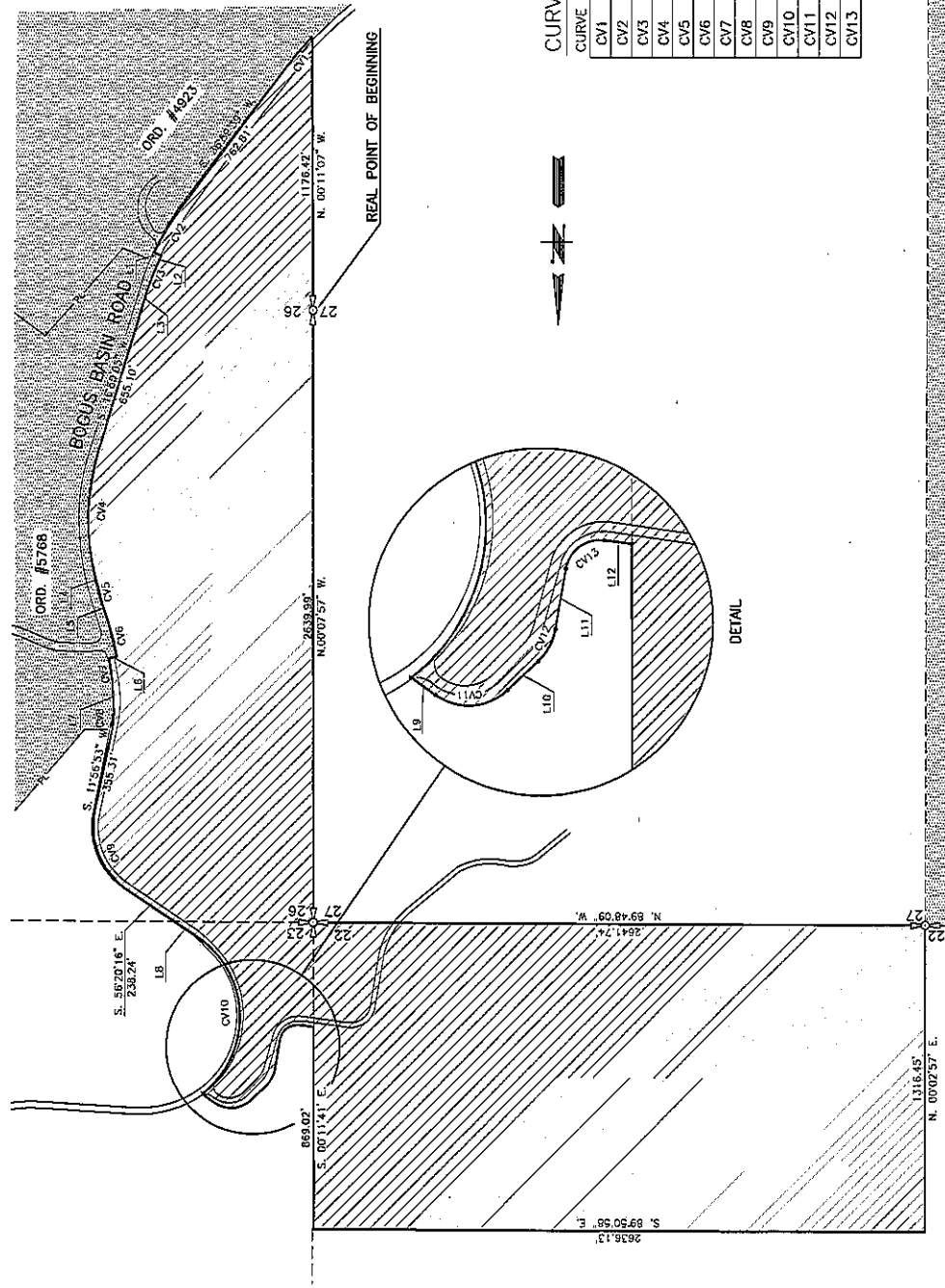
Southwesterly 235.80 feet along a curve to the right having a radius of 1145.92 feet, through a central angle of  $11^{\circ}47'23''$ , and a chord bearing South  $31^{\circ}05'57''$  West 235.38 feet;

South  $36^{\circ}59'39''$  West 762.81 feet to the beginning of a curve;

Southwesterly 157.57 feet along a curve right having a radius of 1432.40 feet, through a central angle of  $6^{\circ}18'10''$ , and a chord bearing South  $40^{\circ}08'44''$  West 157.49 feet to the westerly boundary of Section 26;

Thence leaving said centerline North  $00^{\circ}11'07''$  West 1176.42 feet along the said westerly boundary of Section 26 to the POINT OF BEGINNING.

**TOGETHER WITH** all of N. Bogus Basin Road right of way lying east of that portion of the above described property lying in Sections 23 and 26.



LINE TABLE

LINE	DISTANCE	BEARING
L-1	33.00'	S 64°47'44" E
L-2	36.58'	S 25°12'16" W
L-3	75.53'	S 16°50'06" W
L-4	88.81'	S 12°36'50" E
L-5	124.20'	S 18°06'07" E
L-6	33.00'	S 79°48'48" W
L-7	98.50'	S 03°10'52" E
L-8	126.24'	S 56°20'16" E
L-9	65.06'	S 54°59'50" E
L-10	91.27'	N 45°39'30" E
L-11	130.75'	N 09°53'51" E
L-12	60.56'	S 89°51'50" E

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA ANGLE	CHD BEARING	CHD DIST.
CV1	157.57'	1432.40'	06°18'10"	S 40°08'44" W	157.49'
CV2	235.80'	1145.92'	11°47'23"	S 31°05'57" W	235.38'
CV3	121.83'	834.00'	08°22'10"	S 21°01'11" W	121.72'
CV4	512.43'	997.00'	29°26'55"	S 02°06'38" W	506.81'
CV5	30.36'	317.00'	05°29'17"	S 15°21'29" E	30.35'
CV6	142.71'	1033.00'	07°54'55"	S 14°08'39" E	142.59'
CV7	122.27'	1000.00'	07°00'20"	S 06°41'02" E	122.19'
CV8	92.42'	350.00'	15°07'45"	S 04°23'01" W	92.15'
CV9	393.30'	330.00'	68°17'09"	S 22°11'41" E	370.43'
CV10	788.88'	413.00'	108°54'53"	S 01°52'50" E	675.36'
CV11	170.92'	125.00'	78°20'31"	N 85°49'45" E	157.91'
CV12	80.20'	125.00'	36°45'39"	N 28°16'40" E	78.83'
CV13	114.20'	75.00'	87°14'19"	N 53°31'00" E	103.48'

## EXHIBIT C

### ANNEXATION AND DEVELOPMENT AGREEMENT

This Annexation and Development Agreement ("**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Boise City, hereinafter referred to as "**City**", and Bonar Development Group, Inc., the applicant seeking approval of Applications CUP06-00124, CAR06-00074, CAR06-00075, CVA06-00053, CFH06-0046 and SUB06-00124 relating to Bonar Subdivision, hereinafter referred as the "**Applicant**."

WHEREAS, the Applicant has applied to the City for annexation and development of the property described herein (the "**Property**"); and

WHEREAS, the City, pursuant to 11-8-9, Boise City Code, and 67-6511A, Idaho Code, has the authority to conditionally zone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and pursuant to a specific site plan which is deemed appropriate in the area; and

WHEREAS, the Applicant is willing to consent to annexation of the Property by the City upon the City's approval of the development applications set forth herein, the City's zoning of the Property consistent with this Agreement and the City's approval of the development of the Property consistent with the Site Plan identified below pursuant to Idaho Code § 50-222, but would not consent to annexation without the assurances and consideration set forth herein; and

WHEREAS, zoning and development of the Property as would otherwise be permitted under the Boise City Code and Foothills Policy Plan could result in development that is more dense and more intense than is desirable to either the City or the Applicant.

NOW THEREFORE, with mutual consideration as reflected in the covenants, duties, and obligations herein set forth, the parties do enter into this Agreement.



1. **Description and Location of Property, Size of Property, Present Zoning.** The Property, located as hereinafter described, is currently located within Ada County adjacent to Bogus Basin Road and zoned RP (Rural Preservation). The Applicant seeks annexation by the City and requests the Property be zoned as A-1/DA to permit the development of fourteen (14) residential lots and certain other common recreation lots. The A-1/DA zone shall apply to the Property owned by Applicant, which is specifically described in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is approximately 150 acres in area.

2. **Applications and Consideration for this Agreement.** In conjunction with this Agreement, the Applicant has made the following development applications related to its proposed development of the Property as such have been modified and revised through the process of evaluation by Boise City: CUP06-00124, CAR06-00074, CAR06-00075, CVA06-00053, CFH06-0046 and SUB06-00124 (hereinafter the "**Development Applications**"). The Applicant's consent to annexation and the zoning imposed by the City is conditioned and contingent upon the City's approval of the Development Applications. The Development Applications have been approved by the City and are hereby made part of this Agreement. The final approved versions of the Development Applications, together with adopted findings of fact and conclusions of law for each are attached hereto and incorporated herein as Exhibit "B".

3. **Use Permitted by this Agreement.** The uses allowed pursuant to the annexation and conditional zoning of the Property as reflected in this Agreement are those principle permitted and conditional uses identified in the Boise City Code as permissible within the A-1 Zone (as amended), provided however, that the Property shall not be developed except as set forth herein. Specifically, the Property shall only be subdivided and developed into fourteen (14)

residential lots and certain other common lots as depicted on the Site Plan. No significant change to the elements addressed in this Agreement or conditions of operation specified in this Agreement shall be allowed without modification to this Agreement pursuant to the requirements of the Boise City Code. In the event Applicant changes or expands the project as described by this Agreement without formal modification of this Agreement, except as otherwise permitted herein, Applicant shall be in default of this Agreement.

4. **Development Standards.** The development and use of the Property shall be as a low-density residential development. As set forth above, no more than fourteen (14) residential lots shall be permitted on the Property. The following standards, requirements, and conditions shall apply to the annexing and zoning of the Property as an A-1 zone:

a. The general development pattern for circulation and building location shall generally follow the site plan ("**Site Plan**") attached as Exhibit "C" hereto, including the development of the pathway system located on the common lots adjacent to Bogus Basin Road, and the development of all public roadways entirely within the Property, but the provision for an emergency fire access road located within an easement as depicted on the Site Plan.

b. No substantial expansion of the proposed building area for any lot shall be allowed without formal application for modification of the expansion plans consistent with Boise City Code, and the amendment of this Agreement.

c. A 20,000 square foot building envelop has been identified within each building lot where all houses, structures and yard will be located with the remainder of each lot being encumbered by a conservation easement limiting the development therein. Corrals consistent with the uses permitted under CUP06-00124 shall be permitted outside of the building

envelop within the portion of each lot encumbered by a conservation easement. Utility structures and access roads will be permitted within the portion of each lot encumbered by a conservation easement.

d. The Property shall be developed consistent with the Development Applications identified above previously approved by the City.

e. The Applicant shall incorporate as appropriate into the development, the following fire protection measures required by Section 11-06-05.07.05(A)(6) of the Boise City Code in order to reduce the threat of wildfires and shall be incorporated into the design in accordance with *Uniform Fire Code* and *Boise City Code* Title 7:

1. Provide a divided boulevard entrance to the point at which Becker Ridge Road and the proposed realignment of the public roadway on the Property diverge.

2. Provide fire hydrants served by the municipal water system available to the property consistent with the requirements of the Boise City Code

3. Provide alternative fire access road to the site over an easement across the Property owned by Claremont Realty to the south of the Property, to be recorded prior to the recording of the final plat for the property, shall be constructed to a width of twenty feet and shall have an all weather surface of gravel or other material satisfactory to the Boise Fire Department;

4. Require future maintenance of the alternative fire access road by means of perpetual maintenance obligations imposed upon the owners of the lots within the Property consistent with the requirements of the Boise Fire Department;

5. Require all residential structures within the subdivision shall be constructed with residential fire sprinklers and utilize construction materials, including roofing compliant with Boise City's requirements for fire resistant roofing materials;

6. Require all residential structures to comply with the defensible space and landscaping requirements consistent of the Boise Fire Department and the Boise City Code.

f. To the extent that the fire protection measure set forth herein create ongoing obligations upon individual lot owners or the owners of all lots in the subdivision collectively, the Applicant shall incorporate the fire protection measures set forth herein into the restrictive covenants recorded to encumber the residential lots developed on the Property. Additionally, the Applicant shall incorporate the fire protection plan, the elements of which are set forth in this Development Agreement above as an exhibit to the restrictive covenants encumbering the Property.

g. The six (6) lots on the Property fronting upon Cali Court and Richborough Lane shall have sewer service through an extension of the existing public sewer facilities to them along Bogus Basin Road to the intersection of Bogus Basin Road to Cali Court. The eight (8) lots located on the northern portion of the Property shall be permitted to utilize individual septic systems for wastewater disposal, subject to the necessary consents, permits and waivers from the Department of Environmental Quality, Central District Health Department, Northwest Boise Sewer District, and the Boise City Public Works Department.

h. Livestock shall be permitted on the Property, consistent with CUP06-00124 granted herewith.

i. In satisfaction of the amenity and open space requirements of the Boise City Code, the Applicant will construct a native surface trail within the common lot adjacent to Bogus Basin Road that will be sixty (60) inches wide and will not exceed grades of ten percent (10%). The trail will be made subject to an easement for ingress and egress, which will be

incorporated into the final plat. The Applicant will construct the native trail system within to facilitate future trail connections with properties to the north, south and east, along Bogus Basin Road.

j. The Applicant agrees to revegetate and landscape the common lot with native plants and grasses as necessary to maintain the native condition of the Property. The Applicant will obtain a license agreement from ACHD to enhance the existing drainage, retention and detention facilities located within easements on the Property to landscape them consistent with these obligations. Such native landscaping satisfy the requirements of Boise City's subdivision ordinance and preserve the natural conditions of the Property which is a goal of Boise City's foothills regulations and ordinances.

## **5. Default.**

a. In the event Applicant, Applicant's assigns, subsequent owners of the Property or any other person acquiring an interest in the Property, or any lot created by plat within the Property, fail to faithfully comply with the terms and conditions included in this Agreement, after the City has provided thirty (30) days written notice to the then owner of record of the Property, this Agreement may be terminated by the Boise City Council upon compliance with the requirements of Boise City Code. In the event that the Property has been subdivided and conveyed as individually platted lots and the owner of one or more of those lots shall fail to faithfully comply with the terms and conditions included in this Agreement, then the City shall have all rights and powers available to it to enforce this Agreement against such lot, provided, however, that no such enforcement shall adversely affect or otherwise modify the rights of any lot which is not in fact in default under this Agreement. The City shall provide a reasonable

period of time for Applicant, or the owner of the lot that has in fact failed to faithfully comply with the terms and conditions of this Agreement to rectify issues prior to termination of this Agreement.

b. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Applicant, or the owner of the lot which has in fact failed to faithfully comply with this Agreement, shall comply with the amended terms, provided however, that no amendment or modification shall be initiated by the City unless Applicant, or the owner of the lot which has in fact failed to faithfully comply with this Agreement, is in default under this Agreement. Failure to comply with the amended terms shall result in default.

c. A waiver by the City of any default by Applicant, or the owner of the lot which has in fact failed to faithfully comply with this Agreement, of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

6. **Consent to Rezone.** Applicant, by entering into this Agreement, does hereby agree that in the event there shall be an uncured (after written notice to Applicant) default in the terms and conditions of this Agreement, subject, however, to the provisions of Section 5(a) above regarding individually platted lots which are not in fact in default under this Agreement, that this Agreement shall serve as consent to a reversion to prior zoning of any portion of the Property that is affected by such uncured default, as provided in Idaho Code § 67-6511(d) and Idaho Code § 67-6511A, and immediate deannexation of the Property.

7. **Waiver of Time Limits.** Pursuant to Section 11-08-09 D.6 of the Agreement Ordinance, Applicant hereby waives all time limits required by City Code.

8. **Notices.** Any and all notices required to be given by either of the parties hereto shall be in writing and be deemed given two (2) business days after deposit in the United States mail, certified, return receipt requested, addressed as follows:

a. To the City: Boise City

c/o Director, Community Planning and Development  
P. O. Box 500  
Boise, ID 83701-0500

b. To Applicant: Bonar Development Group, Inc.

202 N. 9th Street, Suite 300  
Boise, ID 83702

With a copy to: Geoffrey M. Wardle

HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main, Suite 1000  
Boise, ID 83702

Either party shall give notice to the other party of any change of their address for the purpose of this section by giving written notice of such change to the other in the manner herein required.

9. **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

10. **Time is of the Essence.** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

11. **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties' respective successors, assigns and personal representatives. This Agreement shall be binding on the owner of the property, each subsequent owner and each other person acquiring an interest in the property.

12. **Effective Date.** This Agreement shall be effective on the date the Boise City Council has approved all of the Development Applications identified herein subject to conditions of approval acceptable to the Applicant, together with such resolutions and ordinances necessary to annex the property, and zone it as A-1/DA.

13. **Requirements for Recordation.** Applicant shall have recorded this document, including all the Exhibits, not later than twenty (20) days following the formal adoption of the annexation and zoning ordinances by the Boise City Council. Failure to comply with this section shall be deemed a default to this Agreement by Applicant.

14. **Termination .** In the event that Boise City does not adopt ordinances annexing the Property and zoning the Property A-1/DA, then this Agreement shall be of no further force and effect and shall terminate.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the date set forth below.



DATED this

3rd day

of 6 December, 2007

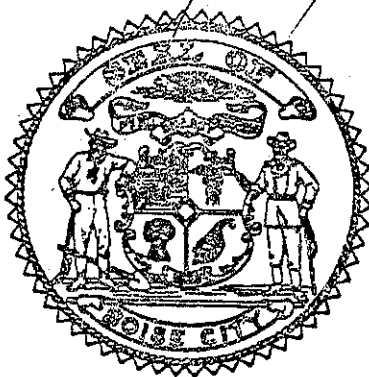
2007

B{v:

Alfred Smith

Maya

*Gwendolyn P. Rooney*



BONAR DEVELOPMENT GROUP, INC., an Idaho corporation



Karl Bova

Presidents

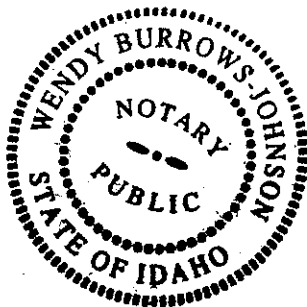
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) ss.

)

On this 3 day of December, 2007, before me, Wendy L. Burrows-Johnson, a Notary Public in and for said State, personally appeared David Bieter & Anne He Mooney, known or identified to me to be the Mayor & City Clerk of **CITY OF BOISE CITY**, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year in this certificate first above written.



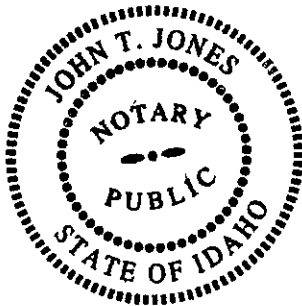
Residing at Callwell, ID


My commission expires 6-14-11

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                    )

On this 29<sup>th</sup> day of October, 2007, before me, JOHN T. JONES,  
a Notary Public in and for said State, personally appeared KARL BONAR, known  
or identified to me to be the PRESIDENT of Bonar Development Group, Inc., the  
corporation that executed the within instrument or the person who executed the instrument on  
behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the  
day and year in this certificate first above written.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at BOISE, IDAHO  
My commission expires MARCH 30, 2010

**LEGAL NOTICE  
ORDINANCE NO. 6640**

**BY THE COUNCIL: BISTERFELDT, CLEGG, EBERLE, JORDAN, SHEALY & TIBBS**

AN ORDINANCE (CAR06-00075 & CAR06-00074/DA/BONAR DEVELOPMENT GROUP FOR PROPERTY LOCATED AT 6700 N. BOGUS BASIN ROAD) ANNEXING CERTAIN LANDS AND TERRITORY, SITUATED IN ADA COUNTY, IDAHO, AND ADJACENT AND CONTIGUOUS TO THE CORPORATE LIMITS OF THE CITY OF BOISE CITY; ESTABLISHING AND DETERMINING THE LAND USE CLASSIFICATION OF SAID LANDS AS A-1/DA (OPEN LAND WITH A DEVELOPMENT AGREEMENT); PROVIDING THAT COPIES OF THIS ORDINANCE SHALL BE FILED WITH THE ADA COUNTY ASSESSOR, THE ADA COUNTY RECORDER, AND THE IDAHO STATE TAX COMMISSION, AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owner of the lands and territory, situated in Ada County and particularly described in Section One of this ordinance, has requested, in writing, annexation of said lands to the city; and

WHEREAS, the Boise City Council has found and determined that said lands and territory are contiguous and adjacent to Boise City, and that annexation of said lands can reasonably be used for orderly development of Boise City; and

WHEREAS, the Boise City Planning & Zoning Commission, pursuant to public notice as required by law, held a public hearing on July 9, 2007, and recommended to the Mayor and Council that annexation be approved and said lands be zoned A-1/DA (Open Land with a Development Agreement); and

WHEREAS, the Boise City Council, pursuant to public notice as required by law, held a public hearing on October 2, 2007, on the proposed zoning for the property described in Section One below, all as required by Idaho Code, Section 67-6525.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

**Section 1.** The lands and territory, situated in Ada County, Idaho, adjacent and contiguous to the City of Boise City, Idaho, particularly described in Exhibits 'A' & 'B' which is annexed hereto and by reference made a part of this ordinance as though fully set forth herein, be, and the same are hereby, annexed to and incorporated in the territorial limits of the City of Boise City, Idaho.

**Section 2.** From and after the effective date of this ordinance, all property included within the boundaries and territory described in Section 1 hereof and annexed as provided by said Section shall be subject to all the statutes pertaining to Boise City and all ordinances, resolutions, police regulations, taxation and other powers of Boise City, and all persons and property within the territory so annexed shall be and are entitled to all benefits and rights as are the persons and property presently within the corporate territorial limits of Boise City.

**Section 3.** The City Engineer of Boise City is hereby directed to lodge and file with the City Clerk of Boise City within ten (10) days after the passage and approval hereof, a legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of the lands and territory annexed, pursuant to the provisions of Section 1 hereof.

**Section 4.** Pursuant to the findings of the Boise City Council, the land use classification of the lands described in Exhibits 'A' and 'B' annexed hereto and by reference made a part thereof is hereby fixed and established as A-1/DA (Open Land with a Development Agreement (Exhibit C), all as provided by the Zoning Ordinance of Boise City.

The reasoned statement is:

The annexation request is entirely within the Boise Area of Impact, and is in compliance with the agreement found in Chapter 11-15 Area of City Impact Agreement.

The requested rezoning is for 14 dwelling units on 150+ acres that represents a density of 1 unit per 10.8 acres. This request is in compliance with the Boise City Comprehensive Plan. This density can be supported through existing services and service installations resulting from the proposed development. The annexation request proposes contiguous development. The style of the subdivision provides a suitable land use for the area. The request meets most of the development policies for Foothills Policy Plan for development projects as it achieves low impact/low density development while conserving open space, wildlife habitat and providing recreational trails and connectivity.

The traffic impacts are in compliance with the policies for densities and open space protection in Foothills Policy Plan. The low density is compatible with the form and scale of the neighborhood.

Although the proposed development is outside the 1.5 minute/ four mile response time and distance for the Boise Fire Department standards for the upper/northern part of the proposal. Provisions and conditions of approval are recommended by the Fire Department to provide a safe and serviceable residential subdivision.

The requested zoning meets the requirements in the Foothills Planned Development Ordinance that implement the Foothills Policy Plan.

**Section 5.** The zoning maps of Boise, Idaho, as the same are provided in Section 11-2-1-2, Boise City Code, are hereby changed, altered, and amended to include the real property described in Section 4 above in the land use classification therein described.

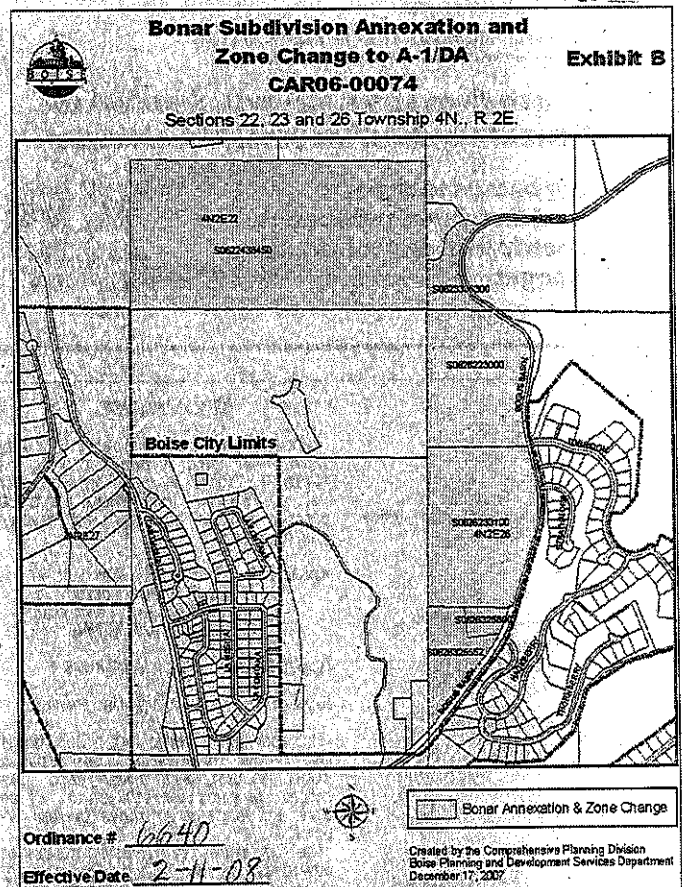
**Section 6.** The City Clerk of Boise City is hereby directed to file, within ten (10) days after the passage and approval hereof, a certified copy of this Ordinance with the Ada County Assessor, County Recorder and County Treasurer of Ada County, Idaho, and the State Tax Commission of Idaho, and to file a copy of said legal description and map, as prepared and lodged with her/him by the City Engineer, with the County Assessor and County Recorder of Ada County, Idaho, and the State Tax Commission of Idaho, all as provided by Sections 50-223 and 63-2215, Idaho Code.

**Section 7.** That this Ordinance shall be in full force and effect immediately upon its passage, approval and publication.

PASSED by the Council of the City of Boise City, Idaho,  
this 5th day of February, 2008.

APPROVED by the Mayor of the City of Boise City, Idaho,  
this 5th day of February, 2008.

ATTEST: City Clerk



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